



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Phillips, Vice President
Henry Alan, LLC
5822 Crighton Drive
Dublin, OH 43016

APR 07 2017

L. Burke Files
POB 27346
Tempe, AZ 85282

RE: MUR 7020

Dear Mr. Phillips and Mr. Files:

The Federal Election Commission reviewed the allegations in your complaint received on February 29, 2016. On March 28, 2017, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations and close its file in this matter. Accordingly, the Commission closed its file in this matter on March 28, 2017.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). A copy of the dispositive General Counsel's Response is enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
General Counsel's Report

1700444-1-1001

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BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MURs: 7020/7021

Complaint Receipt Dates:

February 29, 2016 and March 9, 2016

Response Date: May 2, 2016

Respondents: Paul Babeu for Congress, A

and Chris Marston, as treasurer
(collectively the "Committee")¹

Paul Raymond Babeu

EPS Rating: [REDACTED]

Alleged Statutory/
Regulatory Violations:

52 U.S.C. §§ 30101(2)(A), (B); 30102(e)(1)
11 C.F.R. §§ 100.3(a)(1), (2); 101.1(a)

The Complaints allege that Paul Babeu failed to timely file his Statement of Candidacy. Specifically, the complainants claim that Paul Babeu announced his candidacy on October 5, 2015, but did not register with the Commission or designate an authorized campaign committee until January 31, 2016. The Complaints also allege that the Committee filed a Statement of Organization on October 5, 2015, naming Babeu as a candidate for Arizona's First Congressional District, changed that designation to the Fourth District on an amended Statement of Organization filed on January 28, 2016, and changed that designation back to the First District in another amended Statement of Organization filed on February 10, 2016.

Respondents admit that the original Statement of Candidacy was untimely and that both the Statements of Candidacy and Organization listed the wrong congressional district.² Respondents

¹ Paul Babeu was a candidate for the U.S. House of Representatives in the First Congressional District of Arizona. Babeu lost in the general election on November 8, 2016.

² A person becomes a candidate when, *inter alia*, he or she has received contributions or made expenditures aggregating in excess of \$5,000. 52 U.S.C. § 30101(2)(A); 11 C.F.R. § 100.3(a)(1); (2). The Committee's disclosure reports indicate that it may have crossed the contributions threshold as early as October 6, 2015, and may have crossed the \$5,000 expenditures threshold as early as October 21, 2015. See Paul Babeu for Congress 2015 Year-End Report of Receipts and Disbursements, filed January 31, 2016. As such, when Babeu filed a Statement of Candidacy for the 2016 election on January 31, 2016, it may have been 117 days late (using the contribution date to trigger a potential filing requirement). The Committee concedes that it took steps to correct "any and all problems," after they were discovered in January 2016. It is difficult to pinpoint an exact date based on the Committee's reports. The Commission's Reports Analysis Division ("RAD") does not have a policy to try to determine the exact date a Statement of Candidacy would be due based on disclosure reports. Therefore, in cases in which the Statement of Candidacy was filed simultaneously with

state, however, that the Committee timely filed its Statement of Organization and all disclosure reports, and they argue that Babeu's filings and public statements put the public on notice he was running for Congress. Finally, Respondents state they have amended their statements to show the correct district.³

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, the Committee's corrective actions, and the fact that Babeu's untimely Statement of Candidacy did not cause the Committee to miss filing a required quarterly report, we recommend that the Commission dismiss the allegations consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the Commission close the file as to all respondents and send the appropriate letters.

the disclosure report covering the same reporting period when the candidate appeared to cross the \$5,000 threshold, RAD would not take further action, such as sending a Request for Additional Information to the Committee.

³ The Committee attributed any errors to its former legal counsel.

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Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel

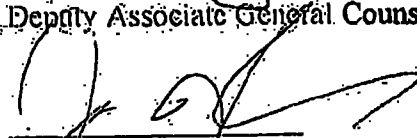
2.27.17

Date


BY:


Stephen Gura

Deputy Associate General Counsel


Jeff S. Jordan

Assistant General Counsel


Donald E. Campbell

Attorney

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